REMARKS

The Office Action issued on October 6, 2008, rejected claims 1-3, 5-8, 11-16, 18-24, 27, 29-39, and 42-44[1] under 35 USC § 102(e) as anticipated by US Application Publication No. 2001/0041991 by Segal, et al. ("Segal"). The remaining claims (4, 9-10, 17, 25-26, 28, and 40-41) were rejected under 35 U.S.C. § 103(a) as obvious over the combination of Segal and US Application Publication No. 2002/0010679 by Felsher ("Felsher").

By this Response and enclosed evidence, Applicants remove the Segal reference by presenting additional evidence of Applicants' invention of the claimed subject matter prior to the filing date of the US provisional application to which that reference claims priority[2]. As shown by the attached Second Declaration of Alan Haaksma Under 37 CFR § 1.131, the inventors conceived of the claimed invention prior to the filing date of the provisional application to which the Segal reference claims priority, then diligently reduced it to practice. This fact excludes the Segal reference from the body of prior art under 35 USC § 102(e). Since the Segal reference has been removed, the rejections presented in the Office Action have been overcome.

Applicants believe that the application is in condition for allowance, and prompt action by the Office toward that end is respectfully requested. In the event any issue(s) remain, the undersigned invites the Examiner to contact him by telephone to expedite the examination of this application. Thank you.

Respectfully submitted,

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[1] Claims 43-44 are identified as rejected in the Office Action Summary, and are discussed in the narrative under this anticipation rejection, though they are not expressly characterized as rejected in the Office Action.

[2] Counsel believes that the USPTO misinterprets 35 USC § 102(e) by treating references as if they had been filed on the filing date of provisional applications to which they claim priority, contrary to the plain language of that subsection, by poor parsing of § 120. Understanding that this is the position of the BPAI, counsel does not expect the Examiner to hold otherwise. Applicant reserves this argument for appeal, if necessary.